

AMENDED IN SENATE AUGUST 16, 1999

AMENDED IN SENATE JUNE 30, 1999

AMENDED IN SENATE JUNE 21, 1999

AMENDED IN ASSEMBLY MAY 13, 1999

AMENDED IN ASSEMBLY APRIL 14, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1392

Introduced by Assembly Member Hertzberg

February 26, 1999

An act to amend Sections 6931 and 19381 of, and to add Sections 6931.5 and 19381.5 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, as amended, Hertzberg. Taxation: judicial relief.

The California Constitution, the Sales and Use Tax Law, and provisions pertaining to the administration of franchise and income tax laws prohibit the issuance of any injunction, writ of mandate, or other legal or equitable process to prevent or enjoin the assessment or collection of those taxes, but permit an action to be maintained after the tax is paid to recover the tax claimed to be illegal.

This bill would permit an action to determine the validity of an amount of any of those taxes if the plaintiff has filed a ~~good and sufficient~~ bond to guarantee payment of the amount ~~due of the assessment~~ and other amounts, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6931 of the Revenue and
2 Taxation Code is amended to read:

3 6931. (a) No injunction or writ of mandate or other
4 legal or equitable process shall issue in any suit, action, or
5 proceeding in any court against this state or against any
6 officer of the state to prevent or enjoin the collection
7 under this part of any tax or any amount of tax required
8 to be collected.

9 (b) An action may be maintained in accordance with
10 Section 6931.5 to determine the validity of an amount of
11 tax. During the pendency of any action as so described,
12 the collection of any amount of tax that is the subject of
13 that action shall be limited as specified by Section 6931.5.

14 SEC. 2. Section 6931.5 is added to the Revenue and
15 Taxation Code, to read:

16 6931.5. (a) Notwithstanding any other provision of
17 law, within one year after an assessment becomes final an
18 action to determine whether an assessment is void in
19 whole or in part may, subject to subdivisions (b), (c), (d),
20 (e), and (f), be brought against the board if the plaintiff
21 files with the board a ~~good and sufficient~~ bond to
22 guarantee the payment of the amount ~~—due of the~~
23 *assessment* and any additional amount, including interest
24 and penalties, that may reasonably be expected to
25 become due during the ~~pendency~~ *first year* of the action.
26 No other provision of law shall be construed to require
27 that the amount of a bond filed pursuant to this
28 subdivision differ from the bond amount required by this
29 section.

30 (b) With respect to a taxpayer who files a bond in
31 accordance with subdivision (a), all of the following
32 apply:

33 (1) The filing of the bond does not toll the accrual of
34 interest with respect to the disputed tax assessment.

(2) No penalty for late payment shall be assessed upon the disputed tax assessment with respect to which the bond is filed.

(3) If at any time during the pendency of the action ~~or during the pendency of any appeal by the plaintiff of the trial court's decision in that action, the trial court or appellate court, as applicable, determines that the~~ *the trial court determines that the* amount of the bond has become insufficient to provide the guarantee described in subdivision (a), the plaintiff shall increase the amount of the bond to an amount that is sufficient to provide that guarantee.

(4) No more than once a year during the pendency of the action or during the pendency of any appeal by the plaintiff of the trial court's decision in that action, the State Board of Equalization may, by written notice to the plaintiff, require the plaintiff, no sooner than 60 days after the date of that notice, to increase the amount of the bond to an amount that is sufficient to guarantee additional interest accruing during the year. Any plaintiff receiving a notice as described in the preceding sentence may, as an alternative to increasing the amount of the bond as required by that notice, pay the additional interest accruing during the year.

(c) The amount and terms of the bond and the sureties on the bond authorized by subdivision (a) must be approved by ~~the~~ *a* judge of the trial court hearing the action, and that approval shall not be unreasonably withheld.

(d) Notwithstanding any other provision of law, the bond may be issued only by an admitted surety. The court shall follow the rules, definitions, and procedures set forth in Sections 995.030, 995.040, 995.050, 995.110, 995.120, 995.140, 995.150, 995.160, 995.190, 995.320, 995.330, 995.340, 995.350, 995.360, 995.370, 995.380, 995.420, and 995.430 of, and Article 6 (commencing with Section 995.610) to Article 15 (commencing with Section 996.510), inclusive, of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure. If approval is obtained in accordance with subdivision (c), no further collection of any assessed

1 amount that is the subject of the action shall be made
2 during the pendency of that action.

3 (e) The plaintiff, or the agent or attorney of the
4 plaintiff, shall state under oath that a bond has been
5 approved and filed in accordance with this section.

6 (f) *Liability on the bond may be enforced by the trial*
7 *court if the assessment is determined to be valid and is not*
8 *paid within 30 days after the judgment on the action*
9 *becomes final.*

10 (g) This section applies to assessments that become
11 final either before, or on or after, the effective date of the
12 act adding this section, but does not authorize the filing
13 of any action that, without regard to this section, is barred
14 by operation of law, including the doctrine of res judicata,
15 as of the effective date of the act adding this section.

16 SEC. 3. Section 19381 of the Revenue and Taxation
17 Code is amended to read:

18 19381. (a) No injunction or writ of mandate or other
19 legal or equitable process shall issue in any suit, action, or
20 proceeding in any court against this state or against any
21 officer of this state to prevent or enjoin the assessment or
22 collection of any tax under this part.

23 (b) An action with respect to disputed taxes may be
24 maintained in accordance with either of the following:

25 (1) Any individual after protesting a notice or notices
26 of deficiency assessment issued because of his or her
27 alleged residence in this state and after appealing from
28 the action of the Franchise Tax Board to the State Board
29 of Equalization, may within 60 days after the action of the
30 State Board of Equalization becomes final commence an
31 action, on the grounds set forth in his or her protest, in the
32 Superior Court of the County of Sacramento, in the
33 County of Los Angeles, or in the City and County of San
34 Francisco against the Franchise Tax Board to determine
35 the fact of his or her residence in this state during the year
36 or years set forth in the notice or notices of deficiency
37 assessment. No tax based solely upon the residence of
38 such an individual may be collected from that individual
39 until 60 days after the action of the State Board of
40 Equalization becomes final and, if he or she commences

1 an action pursuant to this section, during the pendency
2 of the action, other than by way of or under the jeopardy
3 assessment provisions of this part.

4 (2) An action may be maintained in accordance with
5 Section 19381.5 to determine the validity of an amount of
6 tax. During the pendency of any action as so described,
7 the collection of any amount of tax that is the subject of
8 that action shall be limited as specified by Section 19381.5.

9 SEC. 4. Section 19381.5 is added to the Revenue and
10 Taxation Code, to read:

11 19381.5. (a) Notwithstanding any other provision of
12 law, within one year after an assessment becomes final an
13 action to determine whether an assessment is void in
14 whole or in part may, subject to subdivisions (b), (c), (d),
15 (e), and (f), be brought against the Franchise Tax Board
16 if the plaintiff files with the Franchise Tax Board a ~~good~~
17 ~~and sufficient~~ bond to guarantee the payment of the
18 amount ~~due of the assessment~~ and any additional amount,
19 including interest and penalties, that may reasonably be
20 expected to become due during the ~~pendency~~ *first year*
21 of the action. No other provision of law shall be construed
22 to require that the amount of a bond filed pursuant to this
23 subdivision differ from the bond amount required by this
24 section.

25 (b) With respect to a taxpayer who files a bond in
26 accordance with subdivision (a), all of the following
27 apply:

28 (1) The filing of the bond does not toll the accrual of
29 interest with respect to the disputed tax assessment.

30 (2) No penalty for late payment shall be assessed upon
31 the disputed tax assessment with respect to which the
32 bond is filed.

33 (3) If at any time during the pendency of the action ~~or~~
34 ~~during the pendency of any appeal by the plaintiff of the~~
35 ~~trial court's decision in that action, the trial court or~~
36 ~~appellate court, as applicable, determines that the~~ *the*
37 *trial court determines that the* amount of the bond has
38 become insufficient to provide the guarantee described
39 in subdivision (a), the plaintiff shall increase the amount

1 of the bond to an amount that is sufficient to provide that
2 guarantee.

3 (4) No more than once a year during the pendency of
4 the action or during the pendency of any appeal by the
5 plaintiff of the trial court's decision in that action, the
6 Franchise Tax Board may, by written notice to the
7 plaintiff, require the plaintiff, no sooner than 60 days after
8 the date of that notice, to increase the amount of the bond
9 to an amount that is sufficient to guarantee additional
10 interest accruing during the year. Any plaintiff receiving
11 a notice as described in the preceding sentence may, as
12 an alternative to increasing the amount of the bond as
13 required by that notice, pay the additional interest
14 accruing during the year.

15 (c) The amount and terms of the bond and the sureties
16 on the bond authorized by subdivision (a) must be
17 approved by ~~the~~ a judge of the trial court hearing the
18 action, and that approval shall not be unreasonably
19 withheld.

20 (d) Notwithstanding any other provision of law, the
21 bond may be issued only by an admitted surety. The court
22 shall follow the rules, definitions, and procedures set forth
23 in Sections 995.030, 995.040, 995.050, 995.110, 995.120,
24 995.140, 995.150, 995.160, 995.190, 995.320, 995.330, 995.340,
25 995.350, 995.360, 995.370, 995.380, 995.420, and 995.430 of,
26 and Article 6 (commencing with Section 995.610) to
27 Article 15 (commencing with Section 996.510), inclusive,
28 of Chapter 2 of Title 14 of Part 2 of, the Code of Civil
29 Procedure. If approval is obtained in accordance with
30 subdivision (c), no further collection of any assessed
31 amount that is the subject of the action shall be made
32 during the pendency of that action.

33 (e) The plaintiff, or the agent or attorney of the
34 plaintiff, shall state under oath that a bond has been
35 approved and filed in accordance with this section.

36 (f) *Liability on the bond may be enforced by the trial*
37 *court if the assessment is determined to be valid and is not*
38 *paid within 30 days after the judgment on the action*
39 *becomes final.*

1 (g) This section applies to assessments that become
2 final either before, or on or after, the effective date of the
3 act adding this section, but does not authorize the filing
4 of any action that, without regard to this section, is barred
5 by operation of law, including the doctrine of res judicata,
6 as of the effective date of the act adding this section.

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